IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/03/2004

Coram

Honourable Mr.Justice P.SATHASIVAM
and
Honourable Mr.Justice S.R.SINGHARAVELU

H.C.P.No. 86 of 2004 and H.C.P.No. 91 of 2004

V.Uma Shenbagam ... Petitioner
in both HCPs

-Vs-

1. The Government of Tamil Nadu
represented by its Secretary to Government
Prohibition and Excise Department,
Fort Saint George,
Chennai-9.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai.8. ..Respondents
in both HCPs.

Habeas Corpus Petition No.86/2004 filed under Article 226 of the Constitution of India for issue of a writ of Habeas Corpus calling for the records leading to the detention of the petitioner's brother namely Sudhagar alias Vasanth detained under Act 14/82 vide detention order dated 04.05.2003 on the file of the 2nd respondent made in proceeding Memo No.252/BDFGIS/2003 and quash the same as illegal and consequently direct the respondents to produce the body and person of the detenu Sudhagar alias Vasanth now confined in Central Prison, Chennai before this Court and set him at liberty.

Habeas Corpus Petition No.91/2004 filed under Article 226 of the Constitution of India for issue of a writ of habeas corpus calling for the records leading to the detention of the petitioner's mother namely Vasanthi @ Santhi @ Lakshmi detained under Act 14/82 vide detention order dated 04.05.2003 on the file of the 2nd respondent made in proceeding Memo No.251/BDFGIS/2003 and quash the same as illegal and consequently direct the respondents to produce the body and person of the detenue Vasanthi @ Santhi @ Lakshmi now confined in Special Prison for Women, Vellore before this Court and set her at liberty.

!For Petitioner : Mr.P.Venkatasubramanian

in both HCPs

^For Respondents : Mr.A.Navaneethakrishnan
in both HCPs Addl. Public Prosecutor

:COMMON ORDER

(Order of the court was made by S.R.SINGHARAVELU, J.)

The order dated 04.05.2003 passed by the Commissioner of Police, Greater Chennai, detaining Sudhagar alias Vasanth and Tmt.Vasanthi alias Shanthi alias Lakshmi as Immoral Traffic Offenders based upon two adverse

cases and a ground case, the occurrence of which has taken place on 19.4.2003 at about 8.00 p.m. is challenged by the relative of the detenus in these two Petitions.

2. In the grounds of detention, it was contended that on 19.04.2003 at about 8.00 p.m. when the Inspector of Police, Anti Vice Squad, Chennai City upon reliable information rushed to the spot at No.27/2, Raji Lane, Ayanavaram, Chennai, at 8.40 p.m. it was found that the detenus were indulging in the offence of immoral traffic at the spot. Upon seeing the detenus and as the Grade I Police Thiru Nagarajan was made to get introduced with them, the detenus were found to have induced Thiru Nagarajan to have sexual intercourse with any of the available girls in the above premises on demand of Rs.2,000/- for the same. Thiru Nagarajan replied them that he had no money and informed them that he will come there in a short time and immediately had reported the fact to the Inspector of Police Thiru T.P. Rajendran, who till then was keeping himself concealed in a nearby place and soon after such information from Thiru Nagarajan,the squad rushed to the place of occurrence. Annoyed over the interference, the detenus got enraged and while the detenue Vasanthi asked the other detenu Sudhagar to do away with the police, the other detenu Sudhagar also was said to have taken out a knife from his hip and rushed to stab Thiru Nagarajan, Police Constable which was warded off. The detenue Vasanthi was also said to have taken out a brandy bottle, hurled the same against the police party and when they moved aside, the bottle fell on the road side, broken into pieces and the broken pieces scattered all over the place. Taking note of all these facts of occurrence, the nearby residents have rushed themselves hither and thither and thus, there was confusion, turmoil, and disorder in the public place.

3. Based upon this occurrence, the Detaining Authority considered that the detenus were found committed crimes and also acted in a manner prejudicial to the maintenance of public order by forcing men against their wish to have sexual intercourse with woman and as such, they have come under the definition of Immoral Traffic Offender as contemplated under Section 2(g) of Tamil Nadu Act 14 of 1982.

4. The learned counsel appearing for the detenus vehemently argued that as mentioned in the grounds of detention, none was forced to have sexual intercourse with the girls. Inasmuch as none of the documents would show that there was actually force applied upon any one in order to commit an offence under I.T.P. Act, it was argued that there was no application of mind by the Detaining Authority to come to the conclusion that the detenus have forced men to have sexual intercourse.

5. In this connection he has also relied upon the judgment dated 10.11.2003 of a Division Bench of our High Court in H.C.P.No. 548/2003. In para 13 of the judgment, it was mentioned that the F.I.R. which finds a place in the paper book, did not disclose that the detenu has forced a man to have sexual intercourse with girls against his wish. It is, on that ground it was found that there was no application of mind by the Detaining Authority and the detenu was set at large.

6. After perusing the entire records in this case, we may say that there are words in the grounds of detention that the detenus have forced Thiru Nagarajan to have sexual intercourse with any one of the girls shown to him. It is true that under Section 8(a) of I.T.P. Act " who ever in any public place whether from within any building or house or not, by words, gestures, wilful exposure of his person, tempts or endeavours to tempt or attracts the attention of any person for the purpose of prostitution" and according to Section 8(b) of the Act, "who ever solicits or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place for the purpose of prostitution", are considered to commit the said offence. Therefore, what is understandable is soliciting a man for the purpose of prostitution is an offence. Solicitation can be made either by inducing, tempting or sponsoring a person to commit prostitution. Now in this case, Thiru Nagarajan was induced, solicited and tempted. It was undoubtedly against his wish even as per the statement found on record. If anything is solicited against the wish of a person, then the act of solicitation is considered to involve itself a certain amount of mental force. It is such of the mental force which even though a person was not willing and even after knowing that he was unwilling, had began to induce and tempt. It is, such force that was actually considered in the grounds of detention and the Detaining Authority has applied his mind to such extent of force as was spoken to in the records. Again simply because, there is a word " force" found along with the act of solicitation, it does not mean that we should forget the act of solicitation and concentrate more upon force and upon presuming it as a physical force, we are not expected to burk an offence that had actually been committed. There is elaborate evidence on record to show that the detenus have indulged themselves in committing not only an offence of prostitution but also in indulging themselves in an act of forcing a man into prostitution against his wish and violence upon the interfering police, thereby causing threat not only to the preventing police force but also to the nearby residents and the passers by of the area. It is, in such circumstances, we are not in agreement with the observation made in the above said judgment cited by the learned counsel for the petitioners which may proceed on different footing and on different facts of that case.

7. The next contention of the learned counsel appearing for the petitioners is that he was not supplied with the exact Tamil translation of the first two lines of the name and designation of the deponent of the statement. True, it is that the copy given to him contains the contents of the statement in Tamil and the name and designation of the deponent in English. The English word is" Statement of Thiru Tamilsevan, Head Constable 10638, Anti-Vice Squad, Chintradripet, Chennai.2". The fact that in the paper book copy of which was given to the detenus Item 11 in the Index contains "jkpH;bry;td; thf;FK;yk; gf;fk; 1 8-19) Even the first two lines found in Tamil Version of the statement of the said Tamilselvan, it was found in Tamil that he was the Head Constable of Anti-vice Squad. Therefore, it is made clear that in spite of the fact that non supply of Tamil version for the first two lines of the statement of Tamilselvan with respect to the name and designation of the deponent is true, such particulars are found given and supplied to the detenus in other portions as mentioned above. Therefore, there is no prejudice caused to the detenus and this cannot be a ground to set aside the order of detention.

8. Again, it was contended that the Tamil version of the accident register do not contain the time 9.00 p.m. on 19.4.2003 at which time, the police constable sustained injuries at the hands of the detenus. True, it is that the Tamil Version of the accident register, do not contain the time 9.00 p.m. during which time Nagarajan was said to have sustained the injuries in the said accident. The other particulars are found in Tamil Translated paper. It is very much important to note here that this time 9.00 p.m. at which time the injuries were sustained, was not at all found in the grounds of detention and therefore, there is no necessity for the authorities to supply the version. For this reason, non mention of the time in the Tamil Version is not going to cause any prejudice. Further, it is only in the events of occurrence that started at 8.40 p.m. on the date of occurrence, sustaining of injuries also comes as a part. It is not a running commentary to give the particulars of each and every aspect as to what had happened in the course of incident that is very much necessary for made it known to the detenus. The salient feature of incident which were the basis for the detention alone are required to be supplied to the detenus and that has been rightly done in this case. In this connection it is also to be mentioned that the detenue by name Sudhagar alias Vasanth in his representation dated 21.5.2003 had mentioned that he is a B.A. Graduate and also had applied for the entrance examination for B.L., examination and that he knew English. Therefore,the above argument of the learned counsel for the detenus is not acceptable.

9. The representations were made on 21.5.2003 and 5.10.2003 respectively. So far as the first representation is concerned, it was received on 17.10.2003 and remarks were called for on 19.06.2003. We have perused the entire file produced by the learned Additional Public Prosecutor and found various dates on which the said representations moved into the table of the concerned officials. On physical verification of the entire particulars, we are fully satisfied that there was no delay. The movement of the papers was very much satisfactory.

10. For the above reasons, we find no ground to set aside the order of detention and that there is also application of mind by the Detaining Authority. We confirm the order of detention and accordingly, both the Habeas Corpus Petitions are dismissed.

Index : Yes
Website: Yes

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To
1. The Secretary to Government
State of Tamil Nadu,
Prohibition and Excise Department
Fort St. George,Chennai.9.
2. The Commissioner of Police
Greater Chennai,Chennai.
3. The Superintendent,
Central Prison, Chennai.
4. The Superintendent,
Special Prison for Women, Vellore.
5. The Joint Secretary to Government
State of Tamil Nadu
Public (Law and Order)
Fort St.George,Chennai.9.
6. The Public Prosecutor,
High Court, Chennai.